



Federal Communications Commission
Washington, D.C. 20554

DA 03-2920

September 22, 2003

Via Certified Mail, Return Receipt Requested

Raveesh K. Kumra, President
Entertainment Unlimited, Inc.
18630 Withey Road
Monte Sereno, CA 95030

Stephen Kaffee, Esquire
Suite 700
733 Fifteenth St., N.W.
Washington, DC 20005

Re: Final Bid Withdrawal Payment For Auction No. 11

Dear Mssrs. Kumra and Kaffee:

Entertainment Unlimited, Inc. ("EU"), a participant in Auction No. 11,¹ withdrew high bids on two licenses, BTA 060E and BTA 228F, in that auction,² and after the close of Auction No. 11 EU defaulted on its final payment obligation with respect to a third license, BTA 458E.³ Auction No. 22, the subsequent auction for the licenses on which EU withdrew high bids and defaulted on its final payment obligation in Auction No. 11, has closed.⁴ Therefore, in accordance with the Federal Communication Commission's ("Commission's") rules, we are now able to calculate EU's final bid withdrawal payment and default payment obligations.

Under the Commission's rules, a bidder that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the subsequent winning bid.⁵ If a high bid is withdrawn on a license that remains unsold at the close of the auction, the withdrawing bidder will be required to

¹ "D, E, and F Block Auction Closes," *Public Notice*, DA 97-81 (rel. January 15, 1997) ("*Auction No. 11 Winning Bidders Public Notice*").

² Licenses BTA 060E and BTA 228F are in the Buffalo, NY and Kenewick, WA markets, respectively.

³ License BTA 458E is in the Visalia-Porterville-Hanford, CA market. During Auction No. 11, EU submitted a bid of \$669,000 on license BTA 458E in round 226 and withdrew this bid in round 256. In round 274, EU submitted the winning bid of \$608,000 for license BTA 458E. Pursuant to 47 C.F.R. § 1.2104(g)(1) (1997), EU was assessed a final withdrawal payment of \$61,000 (\$669,000 - \$608,000) at the close of Auction No. 11 and this amount was deducted from EU's upfront payment. *Auction No. 11 Winning Bidders Public Notice*, Attachment A3.

⁴ C, D, E, and F Block Broadband PCS License Auction Closes, Report No. AUC-22-K (Auction No. 22), *Public Notice*, 14 FCC Rcd. 6688 (1999) ("*Auction No. 22 Winning Bidders Public Notice*").

⁵ 47 C.F.R. §§ 1.2104(g)(1), 24.704(a)(1) (1997); *Auction No. 11 Winning Bidders Public Notice*, at 3.

make an interim payment equal to three percent (3%) of the net amount of the withdrawn bid.⁶ This payment amount is deducted from any up-front payments or down payments deposited for this bidder's account with the Commission.⁷ If, in a subsequent auction, that license receives a winning bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and, upon appropriate request, the Commission will refund the interim three percent (3%) payment.⁸ If in a subsequent auction, the winning bid for that license is less than the bidder's withdrawn amount, then the bidder will be required to make a final bid withdrawal payment equal to either the difference between the bidder's net withdrawn bid and the subsequent net winning bid, or the difference between the bidder's gross withdrawn bid and the subsequent gross winning bid, whichever is less.⁹

Under the Commission's rules, a bidder who fails to remit the required down or final payment for a license for which it was the high bidder is subject to a default payment.¹⁰ The default payment has two components. The first component is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less, the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the defaulted bid).¹¹ The second component of the default payment is an additional payment equal to three percent (3%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹² In the event that the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid.¹³

With respect to EU's bid withdrawals on two high bids in Auction No. 11, because both licenses were sold at Auction No. 22 the Commission is now able to assess the full amount of the final bid withdrawal payment for each license.¹⁴ As shown in Attachment A, in Auction No. 22,

⁶ *Auction No. 11 Winning Bidders Public Notice*, at 3 (citing Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 at n. 51 (1994); C.H. PCS, Inc., 11 FCC Rcd 14495 (1996) (requiring a three percent deposit).

⁷ 47 C.F.R. §§ 1.2106(d) and (e), 24.704(a)(1); *Auction No. 11 Winning Bidders Public Notice*, at 3.

⁸ 47 C.F.R. §§ 1.2104(g)(1), 24.704(a)(1); *Auction No. 11 Winning Bidders Public Notice*, at 3.

⁹ 47 C.F.R. §§ 1.2104(g)(1), 24.704(a)(1); *Auction No. 11 Winning Bidders Public Notice*, at 3.

¹⁰ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(b), 24.704(a)(1) and (2); *Auction No. 11 Winning Bidders Public Notice*, at 5.

¹¹ 47 C.F.R. §§ 1.2104(g)(2), 24.704(a)(1); *Auction No. 11 Winning Bidders Public Notice*, at 5.

¹² 47 C.F.R. §§ 1.2104(g)(2), 24.704(a)(2); *Auction No. 11 Winning Bidders Public Notice*, at 5.

¹³ 47 C.F.R. §§ 1.2104(g)(2), 24.704(a)(2); *Auction No. 11 Winning Bidders Public Notice*, at 5.

the winning bid amount of \$1,280,000 for license BTA 060E was less than EU's withdrawn bid amount of \$1,814,000, and the winning bid amount of \$17,253 for license BTA 228F was less than EU's withdrawn bid amount of \$168,000.¹⁵ In accordance with Sections 1.2104(g)(1) and 24.704(a)(1) of the Commission's rules, EU is assessed a final bid withdrawal payment of \$534,000 in connection with license BTA 060E and a final bid withdrawal payment of \$150,747 in connection with license BTA 228F.¹⁶ Because the two licenses were unsold at the close of Auction No. 11, interim bid withdrawal payments equal to three percent of the withdrawn bids were deducted from any upfront payments or down payments on deposit in EU's account with the Commission.¹⁷ The cumulative sum of these interim bid withdrawal payments is \$59,460.¹⁸ Therefore, in accordance with Section 1.2104(g)(1), after applying the interim bid withdrawal payments of \$59,460 to the bid withdrawal payment obligations of \$684,747, EU owes an outstanding balance of \$625,287 in connection with these two licenses, on which EU withdrew high bids during Auction No. 11.

With respect to EU's default on license BTA 458E, EU was assessed an interim default payment of \$18,240 (3% of the net defaulted bid), pending re-auction of the license.¹⁹ EU failed to pay any amount of the interim default payment. Because this license was sold at Auction No. 22, the Commission is now able to assess the full amount of the final default payment for this license. As shown in Attachment B, License BTA 458E sold in auction No. 22 for \$613,000, which exceeded EU's defaulted bid in Auction No. 11. Therefore, pursuant to Sections 1.2104(g)(2) and 24.704(a)(2), the final default payment on license BTA 458E equals \$18,240.²⁰ Accordingly, combined with the outstanding balance of \$625,287 mentioned above, EU's total outstanding balance relating to the withdrawal and default on the three licenses is \$643,527.

EU is in debt to the United States in the amount of \$643,527,²¹ payable in full, immediately, and without further demand. As permitted under 31 U.S.C. § 3717, the debt is subject to interest, penalties, and administrative costs, and interest accrues from the date of this letter, which is also its mailing date. EU, the debtor, may avoid payment of the interest if it tenders to the Commission full payment within 30 days of the date of the letter. Moreover, the

¹⁴ See *Auction No. 11 Winning Bidders Public Notice*, at 3, and at Attachment B2.

¹⁵ See Attachment A to this letter, which calculates the final bid withdrawal payments.

¹⁶ 47 C.F.R. §§ 1.2104(g)(1), 24.704(a)(1).

¹⁷ 47 C.F.R. §§ 1.2104(g)(1), 24.704(a)(1); *Auction No. 11 Winning Bidders Public Notice*, at 3.

¹⁸ Attachment A.

¹⁹ Letter from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Stephen Kaffee, Esquire, Attorney for Entertainment Unlimited, Inc., 14 FCC Rcd 4026, 4030 (1999) ("*Interim Default Payment Letter*").

²⁰ 47 C.F.R. §§ 1.2104(g)(2), 24.704(a)(2).

²¹ See Attachments A and B. This total represents the sum of the final withdrawal payments and the final default payment owed by EU as set forth above and in the attachments.

debt is subject to an additional charge to cover the cost of processing and handling of delinquent debts, and a penalty charge in the amount permitted by law. The penalty charge for delinquent debt payments permitted by 31 U.S.C. § 3717 currently is 6 percent a year for the failure to pay any part of the debt more than 90 days past due.

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.2104(g) and 24.704(a) of the Commission's Rules, 47 C.F.R. §§ 1.2104(g) and 24.704(a), Entertainment Unlimited, Inc. is ASSESSED a final bid withdrawal payment of \$534,000 on license BTA 060E, and a final bid withdrawal payment of \$150,747 on license BTA 228F as computed in Attachment A.

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104 and 1.2106, Entertainment Unlimited, Inc.'s interim bid withdrawal payments of \$59,460, will be applied towards the sum of the final bid withdrawal payments of \$684,747, leaving Entertainment Unlimited, Inc. with a final bid withdrawal payment of \$625,287.

IT IS FURTHER ORDERED, that, pursuant to 47 C.F.R. §§ 1.2104(g)(2) and 24.704(a)(2), Entertainment Unlimited, Inc. is ASSESSED a final default payment obligation in connection with license BTA 458E of \$18,240 as computed in Attachment B.²²

It is FURTHER ORDERED that EU's debt of \$643,527 be paid immediately, in accordance with the payment instructions in Attachment C within 30 days of the date of this letter, and if it is unpaid 30 days after the date of this letter, interest will accrue from the date of this letter along with penalties and administrative costs permitted by 31 U.S.C. § 3717.

It is FURTHER ORDERED that this letter shall be sent to the applicant and its representatives by certified mail, return receipt requested. This action is taken pursuant to authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Kelly A. Quinn, Deputy Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

²² 47 C.F.R. §§ 1.2104(g)(2), 24.704(a)(2).

ATTACHMENT A

**Broadband PCS Service, Blocks D, E, and F
Spectrum License Auction
Multi-Auction Bid Withdrawal Payment Report**

License Number Frequency block	AUCTION No. 11, EU's Withdrawn Gross Bid	AUCTION No. 11, EU's Withdrawn Net Bid	AUCTION No. 22, Gross Bid	AUCTION 22, Net Bid	Final Bid Withdrawal Payment (Difference between Auction No. 11 and Auction No. 22 Net Bids)
BTA 060E BTA 228F	\$1,814,000 \$224,000	\$1,814,000 \$168,000	\$1,280,000 \$23,004	\$1,280,000 \$17,253	\$534,000 \$150,747
Total					\$684,747

Total Final Bid Withdrawal Payments	\$684,747
Less Sum of Interim Withdrawal Payments	\$59,460
Total Amount Due as a result of EU's Bid Withdrawals on Licenses BTA 060E and BTA 228F	\$625,287

ATTACHMENT B

**Broadband PCS Service, Blocks D, E, and F
Spectrum License Auction
Multi-Auction Default Payment Report**

License Number Frequency block	AUCTION No. 11, EU's Winning Bid	AUCTION No. 22, Winning Bid	EU's Interim Default Payment (3% of defaulted bid)	EU's Final Default Payment
BTA 458E	\$608,000	\$613,000	\$18,240	\$18,240

Final Default Payment due as a result of EU's Default on License BTA 458E	\$18,240
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ATTACHMENT C

The following information is being provided to assist you in making your payment.

PAYMENT INSTRUCTIONS

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by Mellon Bank by 6:00 PM Eastern Time, no later than thirty days from the date of the ORDER; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/Account #911-6106

OBI Field: (Skip one space between each information item)

“AUCTIONPAY”

FCC REGISTRATION NO. (FRN) (same as FCC Form 159, Block 11 and/or 21)

PAYMENT TYPE CODE (enter “APEN”) same as FCC Form 159, Block 24A FCC CODE 1 (same as FCC Form 159, Block 28A: (“11”))

PAYOR NAME (same as FCC Form 159, Block 2)

LOCKBOX No.: 358850

A completed FCC Remittance Advice Form (FCC Form 159, Version 2/03) must accompany payments. On the same business day that the applicant submits payment to Mellon Bank, the applicant must submit a completed FCC Form 159 via facsimile at (412) 209-6045, at least one-hour prior to placing the order for the wire transfer. The specified debt is due and payable to the United States immediately and without demand, and it is subject to interest, penalties, and additional administrative costs. Interest accrues from the date of the ORDER; however, to avoid the payment of charges (i.e., interest, penalties, and administrative costs) and enforced collection, full payment must be made and received within 30 days from the date of the ORDER. Debtor's failure to make complete timely payment will result in assessment of such charges permitted by 31 U.S.C. § 3717.

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser or Tim Dates, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578 or (202) 418-0496.